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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,188

06/09/2005

Leo Derici

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EXAMINER

GULLEDGE, BRIAN M

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

11/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,188	<b>Applicant(s)</b> DERICI ET AL.	
	<b>Examiner</b> Brian Gullede	<b>Art Unit</b> 1619	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/14/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Change of Examiner***

This application has been reassigned from Juné Rogers to Brian Gulledge for the remainder of its prosecution. Applicant is advised that future communications should be directed to Brian Gulledge, who can be contacted at 571-270-5756, Monday–Thursday from 6:00 am until 3:00 pm.

### ***Previous Rejections***

Applicants' arguments, filed August 14, 2008, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on August 14, 2008 was filed after the mailing date of the non-final rejection on May 14, 2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-11 and 13 stand rejected, and newly added claim 15 is rejected, under 35 U.S.C. 103(a) as being unpatentable over Evans et al. (US Patent 5,837,661; issued November 17, 1998) in view of Bolich et al. (US Patent 5,965,115; issued October 12, 1999).**

As stated in the previous action mailed May 14, 2008, Evans et al. teaches a hair conditioning composition comprising 5-50 wt% of a cleansing surfactant. The composition can comprise a mixture of surfactants (column 2, lines 38-47), as well as a silicone conditioning oil (column 10, lines 65-67, formula IV). The silicone oil is formed into droplets that are from 5 microns to 25 microns (column 20, lines 55-59). So Evans et al. teaches all of the instantly recited limitations except for the inclusion of the specific surface-active block copolymer instantly recited. The Applicant argues that there is nothing in Evans et al. or Bolich et al. to suggest the combination of a cleansing surfactant, a silicone conditioning oil, and a [surface-active] silicone block copolymer (page 9, paragraph 3), but Evans et al. does teach combining the first two components with an additional surfactant. And Bolich et al. teaches a surfactant that reads on the instantly recited surface-active block copolymer (lines 18-27) and its use to stabilize an emulsion (column 9, lines 50-53), and as Evans et al. discloses an emulsion, the motivation to combine, as stated in the previous office action (the desire to provide improved stability) is still deemed valid.

The Applicant also argues that Evans et al. and Bolich et al. do not recognize this composition as affording selective deposition of conditioning agent at the hair tips when the

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composition contains relatively high levels of cleansing surfactant. The data presented in the specification compares four compositions, and the relative selectivity of each composition. Only one example has “significant selectivity” (as defined by the Applicant), which employed a surface active block copolymer of formula I with values of  $m=40$  and  $n=13$  (an  $n/m$  ratio of 0.325), and present in 0.05 wt% (pages 27-28).

While neither Evans et al. nor Bolich et al. recognize that a composition with the ingredients of this example has selective deposition, it is unclear whether this result is truly unexpected, or is the expected outcome of simply increasing the number of ethylene glycol monomers present in one of the components (the difference between non-selective example B and selective example 1). No example was provided to demonstrate whether simply adding extra equivalents of poly(ethylene glycol) to the composition has a similar effect.

Even assuming *arguendo* that this specific combination of ingredients exhibits unexpected selective deposition on hair tips, this outcome has not been shown for the broad genus of surface active block copolymer-comprising compositions currently claimed. The instant claims are not commensurate in scope with the single example provided, as there are ranges recited for four values that are larger in scope than the example.

As for newly added instant claim 15, it recites the limitations of instant claim 6 and that the amount of amino-functionality weight percent from 0.5 to 4 wt%. According to the Applicant’s definition (specification, page 9, lines 12-17), the amino-functionality weight percent translates to the amino-functionalized silicone polymer having a molecular weight between 1125 g/mol and 9000 g/mol relative to each amino functional group. Evans et al. discloses an amino-functionalized silicone that reads on the structure of the instantly recited

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polymer, and the weight range disclosed overlaps (encompasses) the instantly recited range (formula IV, column 11, lines 1-10; m from 1 to 2000 and n from 0 to 1999). And in cases involving overlapping ranges, the courts have consistently held that even a slight overlap in range establishes a *prima facie* case of obviousness. *In re Peterson*, 65 USPQ2d 1379, 1382 (Fed. Cir. 2003).

### ***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Gullledge whose telephone number is (571) 270-5756. The examiner can normally be reached on Monday-Thursday 6:00am - 3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BMG

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612